STAFF REPORT
Community Development Department
Petition Number: VAR-15-005

To:	**The Charlotte County Board of Zoning Appeals**	
From:	**Shaun Cullinan, Planning and Zoning Official**	
Prepared By:	**Ken Quillen, AICP, Planner III**	
Report Date:	**August 5, 2015**	**BZA meeting date: August 12, 2015**

Requested Action/General Information:

Harold Murbarger is requesting two variances. The first variance **(a)** is to reduce the required 7.5' side yard setback to 2.6' for an existing screen enclosure. The second variance **(b)** is to reduce the required 25' front yard setback to 24.8' for the existing single-family residence, in the Residential Single-family-3.5 zoning district. Subject property is located at **26310 Madagascar Road** in Deep Creek (see ***Location Map***). The attached ***Zoning Map*** shows the zoning of this property, which is *Residential Single-family-3.5*. This property has a *Low Density Residential*, Future Land Use Map (FLUM) designation.

The attached ***Aerial Photograph*** shows subject property, which is an irregular shaped lot created by the *Punta Gorda Isles Subdivision* in July of 1972. This lot meets the minimum lot width requirement of 80 feet and the 10,000 square foot minimum lot size requirement, with 10,205 square feet. The existing single-family residence was constructed in 1982 by Amedeo and Ann Giordano. Martha Rogers purchased the property in March of 1989 and later sold it to James and Peggy McFaddin in July of 2003. The McFaddins constructed the swimming pool and pool cage in 2005 and 2006 and later sold the property to the applicant, Mr. Harold Murbarger, in August of 2012.

Staff has attached a copy of ***Section 3-9-33 Residential Single-family*** (Exhibit A) from the current zoning code. ***Subsection (g)*** (Exhibit A-2) lists the development Standards, which requires a 7.5-foot setback along interior side yards and a 25-foot front yard setback.

The applicant submitted the attached ***Boundary Survey*** (Exhibit B-1), which was done on June 11, 2015, showing the existing single-family residence, screened pool and other improvements located on this lot. The variances requested are **(a)** *to reduce the 7.5' interior side setback by 4.9' to allow a 2.6' side setback for the swimming pool screen enclosure*, and **(b)** *to reduce the 25' front setback by 0.2' to allow a 24.8' front setback*. The applicant is requesting these variances to allow these structures to remain "as is". Staff has created an enlarged ***Side Yard Setback Detail*** (Exhibit B-2), to show more clearly the area of the side yard that the pool deck occupies, which is approximately 29± square feet in area.

The applicant has also submitted the attached ***Narrative*** (Exhibit C) stating that the existing residence was constructed in 1986, which is incorrect. It was actually constructed in 1982 and the swimming pool and screen cage was constructed by a previous owner in 2005 and 2006. The applicant's Narrative also explains why the applicant believes this request for a variance should be granted.

An Environmental Specialist has performed a cursory environmental review and their comments are in the attached ***Memorandum*** (Exhibit D) dated July 8, 2015. This review states that there are no environmental issues regarding the requested variances.

Findings: **The five standards for approval of Variance to the side yard (a) according to Section 3-9-6.3(i) of the Charlotte County Zoning Code are as follows:**

1. Unique or peculiar conditions or circumstances exist, which relate to the location, size, and characteristics of the land or structure involved, and are not generally applicable to other lands or structures.

Finding: Although subject property meets the minimum lot width and lot size requirements of code it is an irregularly shaped lot. The irregular pie shape results in a rear yard of only 40 feet in width. The building configuration on this irregular shaped lot is unique. All of these conditions combined do create peculiar conditions that are not generally applicable to other properties.

2. The strict and literal enforcement of the zoning section of the Land Development Regulations would create an undue hardship as distinguished from a mere inconvenience on the property owners. Physical handicaps or disability of the applicant and other considerations may be considered where relevant to the request.

Finding: A swimming pool and screen enclosure is a typical accessory use to single-family residences in Florida. A strict and literal enforcement of the 7.5-foot side yard setback for the existing screen enclosure would result in demolition and reconstruction of the pool slab and screen enclosure, which would be an undue hardship as distinguished from a mere inconvenience.

3. The granting of a variance would not be injurious to or incompatible with contiguous uses, the surrounding neighborhood, or otherwise detrimental to the public welfare.

Finding: This variance request is to allow an existing pool deck and screen enclosure to remain "as is" with a 2.6-foot side setback. This pool and screen enclosure is a permitted accessory use and structure in the RSF-3.5 zoning district. Staff believes that the screen enclosure's projection into the required 7.5-foot side yard for a distance of only 11 feet would not be injurious to or incompatible with the adjacent residences.

4. The condition giving rise to the requested variance has not been created by any person presently having an interest in the property and the conditions cannot reasonably be corrected or avoided by the applicant.

Finding: The applicant purchased subject property in August of 2012 with all of the existing structures and conditions already in place. These conditions cannot reasonably be corrected by the applicant and were created in 2005 when the swimming pool was constructed by a previous owner.

5. The requested variance is the minimum modification of the regulation at issue that will afford relief.

Finding: The requested variance of 4.9 feet is the minimum modification that will afford relief because the existing pool deck and screen enclosure has an existing setback of 2.6 feet. However, this variance is not for the entire length of the structure, but only for a corner of the pool deck and screen enclosure, which encroach into the required side setback for a distance of approximately 11 feet.

Findings: **The five standards for approval of Variance to the front yard (b) according to Section 3-9-6.3(i) of the Charlotte County Zoning Code are as follows:**

1. Unique or peculiar conditions or circumstances exist, which relate to the location, size, and characteristics of the land or structure involved, and are not generally applicable to other lands or structures.

Finding: Although subject property meets the minimum lot width and lot size requirements of code it is an irregularly shaped lot. The irregular shape and curvature of the street right-of-way results in a concave front lot line that bends into the lot or towards the residence. If the original home builder assumed that the front lot line was a straight line between the front lot pins, then the home would appear to be in compliance, because the front lot line bows approximately one-foot near the center of this lot, which is where the nonconforming setback dimension is located. This irregular shaped lot is unique. All of these conditions combined do create peculiar conditions that are not generally applicable to other properties.

2. The strict and literal enforcement of the zoning section of the Land Development Regulations would create an undue hardship as distinguished from a mere inconvenience on the property owners. Physical handicaps or disability of the applicant and other considerations may be considered where relevant to the request.

Finding: The existing single-family residence was constructed in 1982 by a builder for the original home owner. A strict and literal enforcement of the 25-foot front yard setback for the existing residence would require demolition and reconstruction of the entry portico, which would be an undue hardship as distinguished from a mere inconvenience.

3. The granting of a variance would not be injurious to or incompatible with contiguous uses, the surrounding neighborhood, or otherwise detrimental to the public welfare.

Finding: This variance request is to allow an existing portico for this residence to remain "as is" with a 24.8-foot front setback. This 0.2-foot variance is equal to 2.4-inches, which could be approved as an Administrative Variance, but is included in this application because of the required side yard setback variance. Staff believes that this minor projection into the required 25-foot front yard for a distance of approximately one or two feet would not be injurious to or incompatible with the adjacent residences.

4. The condition giving rise to the requested variance has not been created by any person presently having an interest in the property and the conditions cannot reasonably be corrected or avoided by the applicant.

Finding: The applicant purchased subject property in August of 2012 with all of the existing structures and conditions already in place. These conditions cannot reasonably be corrected by the applicant and were created in 2005 when the swimming pool was constructed by a previous owner.

5. The requested variance is the minimum modification of the regulation at issue that will afford relief.

Finding: The requested variance of 0.2 feet is the minimum modification that will afford relief because the existing portico has an existing setback of 0.2 feet. However, this variance is not for the entire length of the structure, but only for a corner of the portico, which encroach into the required front setback for a distance of approximately two feet.

ANALYSIS AND CONCLUSIONS:

After review of the site and the application requesting two variances staff believes that both of the requested variances, which are: **(a)** *to reduce the 7.5' interior side setback by 4.9' to allow a 2.6' side setback*; and **(b)** *to reduce the 25' front setback by 0.2' to allow a 24.8' front setback*; to allow the existing swimming pool and single-family residence to remain "as is"; staff believes that the requested variances do meet all five criteria for granting a variance.

If the Board of Zoning Appeals decides to approve the requested variances staff recommends the following conditions be adopted, as conditions of approval, to ensure that development is in compliance with the purpose and intent of the Zoning Code. The recommended conditions are as follows:

1. The two variances, as approved by the Board of Zoning Appeals, are **(a)** to reduce the 7.5' interior side setback by 4.9' to allow a 2.6' side setback; and **(b)** to reduce the 25' front setback by 0.2' to allow a 24.8' front setback.
2. Variance **(a)** extends only to the existing pool and pool cage only as shown on the Boundary Survey in the documents submitted with this application.
3. Variance **(b)** extends only to the existing single-family residence only as shown on the Boundary Survey in the documents submitted with this application.
4. If the existing swimming pool or pool cage is ever removed or replaced this variance shall expire and all future development must be constructed according to all applicable codes in existence at that time, unless a new variance is granted specific to the development proposed at that time.
5. If the existing single-family residence is ever removed or replaced this variance shall expire and all future development must be constructed according to all applicable codes in existence at that time, unless a new variance is granted specific to the development proposed at that time.

Please be advised that the final decision regarding the petition rests with the Board of Zoning Appeals, and will be decided upon consideration of all the evidence introduced at the hearing.

Attachments: Staff Report (4), Location Map, Zoning Map, Aerial Photo, Section 3-9-33 (2), Boundary Survey (2), Narrative and Environmental Specialist Memorandum

Community Development

CHARLOTTE COUNTY

Location Map for VAR-15-005

16/40/23 Mid-County

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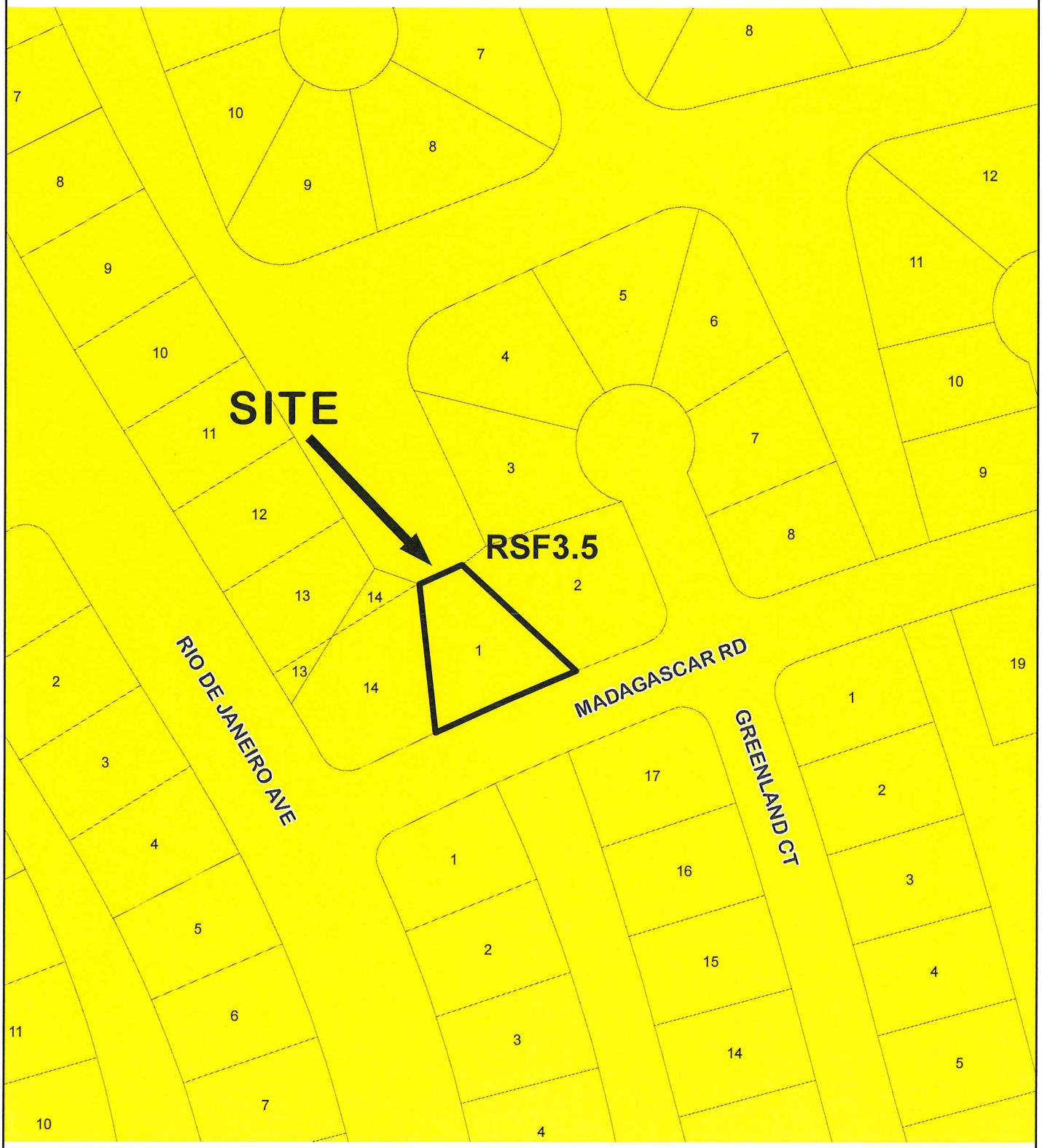
Community Development

CHARLOTTE COUNTY

Zoning Map for VAR-15-005



16/40/23 Mid-County

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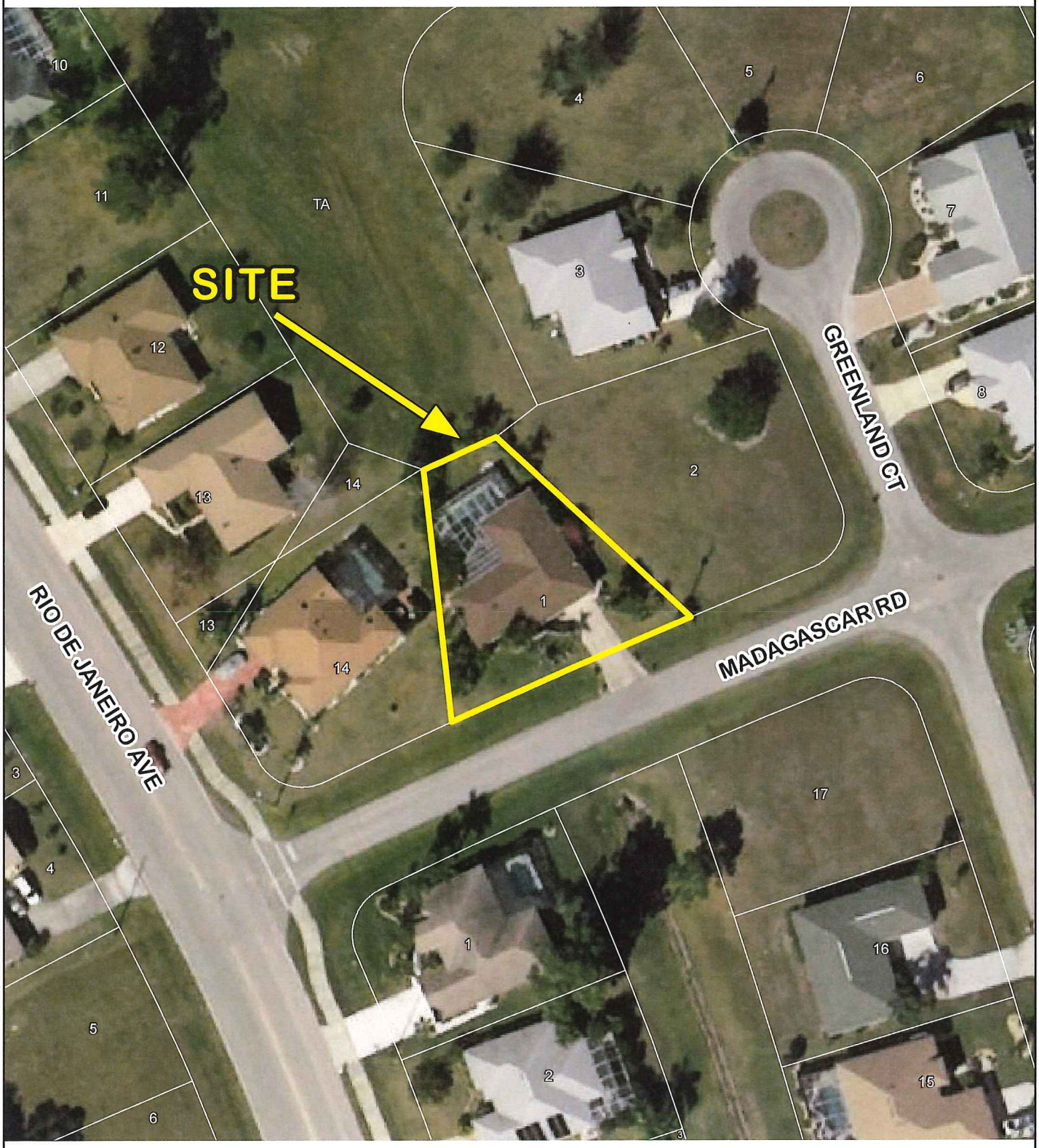
Community Development

CHARLOTTE COUNTY

2014 Aerial View for VAR-15-005



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Section 3-9-33 Residential Single-family (RSF).

(a) *Intent*. The purpose and intent of these districts is to provide for single-family residential dwellings and other uses normally associated therewith. Among RSF-2, RSF-3.5 and RSF-5 districts, there are variations in requirements for lot area, width, and certain yards.

(b) *Permitted Uses and Structures (P)*: The following uses and structures are permitted in this district:

(1) Assisted living facility or day care center, adult, six or less. (see section 3-9-62 Assisted Living Facility)
(2) Emergency services.
(3) Manufactured home (DCA), minimum requirement is 150 miles per hour exposure "C".
(4) Minor Home Occupation. (see section 3-9-74 Home Occupations)
(5) Model home. (see section 3-9-78 Model Homes)
(6) Noncommercial boat docks.
(7) Park, public or not-for-profit.
(8) Single-family detached, which may have a guest suite that is structurally attached, with or without cooking facilities.
(9) Telecommunications facility, 50 feet or less in height. (see section 3-9-68 Communication Towers)

(c) *Permitted Accessory Uses and Structures:* Uses and structures which are customarily accessory and clearly incidental to permitted and conditional uses and structures are permitted in this district.

(1) Boat lifts, boat ramps, and noncommercial boat docks.
(2) Carports, garages, and storage structures.
   a. Detached accessory structures greater than 250 square feet in footprint shall be compatible in appearance with the primary residence, at a minimum, materials and color shall be compatible with the primary residence.
   b. The total footprint of all detached accessory structures shall not exceed ten percent of the parcel size or 1,000 square feet, whichever is greater for a property less than a half-acre. If the property is one half acre or more in size, the total footprint of all detached accessory structures shall not exceed 3,000 square feet. The property owner(s) may apply for a Special Exception to exceed the total maximum accessory structures size limitations contained in this section.
   c. Detached accessory structures shall be located behind the leading edge of the living area of the residence except carports and garages, but must maintain required setbacks.
   d. Construction trailers and cargo containers are prohibited.
(3) Fences or walls, which may be permitted prior to the principal uses and structures.
(4) Greenhouses and other horticultural uses, provided no retail sales are made on the premises.
(5) Guest suite, detached, consisting of living and sanitary facilities only. Cooking facilities shall not be permitted in a detached guest suite. It must meet all applicable development standards set forth in the zoning district.
(6) Keeping of pets, excluding animal breeding, boarding, and training.
(7) Swimming pools, tennis court or other similar non-commercial recreational uses and structures.

(d) *Conditional Uses and Structures (C)*: (For rules and regulations for any use designated as a Conditional Use or Structure, see section 3-9-69 Conditional Uses and Structures)

(1) Bed and breakfast, one or two bedrooms.
(2) Clubhouse.
(3) Cluster housing. (see section 3-9-67 Cluster Housing)
(4) Guest home.
(5) Subdivided lots with 50 foot wide frontage and 5,000 square foot.

(e) *Prohibited Uses and Structures*: Any use or structure not expressly or by reasonable implication permitted herein or permitted by Special Exception, including but not limited to mobile homes, commercial parking lots and private clubs not otherwise permitted, or permitted by Special Excep

(f) *Special Exceptions (S)*: (For procedure see section 3-9-6.2 Special Exc

(1) All conditional uses and structures that cannot meet all conditions s
(2) Assisted living facility or day care center, adult, seven or more. Facility)

Section 3-9-33
(Exhibit A-1)

Section 3-9-33 Residential Single-family (RSF). (continued)

(3) Bed and breakfast, three or more bedrooms.
(4) Cemetery, mausoleum.
(5) Community garden.
(6) Day care center, child.
(7) Elementary, middle, or high school.
(8) Essential services. (see section 3-9-71 Essential Services)
(9) Government uses and facilities.
(10) Major Home Occupation. (see section 3-9-74 Home Occupations)
(11) Place of Worship. (see section 3.7.82 Places of Worship)
(12) Private clubs.
(13) Telecommunications facility, greater than 50 feet in height. (see section 3-9-68 Communication Towers)
(14) University or college.
(15) Yacht clubs, country clubs, and other recreational amenities, including but not limited to tennis courts, basketball courts, and golf courses located on a separate parcel.
(16) Such other uses as determined by the Zoning Official or his/her designee to be:
a. Appropriate by reasonable implication and intent of the district.
b. Similar to another use either explicitly permitted in that district or allowed by Special Exception.
b. Not specifically prohibited in that district.

The BZA shall review a favorable determination of the Zoning Official under this provision at the time the Special Exception application is presented to it. An unfavorable determination of the Zoning Official or his/her designee shall be appealable pursuant to section 3-9-6 Board of Zoning Appeals.

(g) *Development Standards*:

	RSF-2	RSF-3.5	RSF-5
Lot (minimum)	---	---	---
Area (square feet)	20,000	10,000	7,500
Width (feet)	100	80	70
Setbacks (minimum feet)	---	---	---
Front	25	25	25
Side (interior)	15	7.5	7.5
Side (street)	20	15	15
Rear (interior)	20	20	20
Rear for all accessory structures (interior)	10	10	10
Rear (street)	25	25	25
Abutting a greenbelt	15	15	15
All accessory structures abutting a greenbelt	10	10	10
Abutting water	20	20	20
Bulk (maximum)	---	---	---
Lot coverage of all buildings	40%	40%	40%
Height (feet)	38	38	38
Density (units/acres)	2	3.5	5

Where properties lie anywhere on a barrier island or within 1,200 feet of the water of Charlotte Harbor, the Gulf of Mexico, Lemon Bay, Gasparilla Sound, Placida Harbor, Red Fish Cove, the Myakka River, the Peace River, or Coral Creek, structures must also be constructed in accordance with section 3-9-88, Waterfront Property.

Landscape buffers and screening shall be required in this district in accordance with the provisions of Article XXII, Chapter 3-5, of the Code, as the same shall be amended.

(h) *Signs*. Signs shall be in accordance with section 3-9-85.

(i) *Off-street parking*. Off-street parking shall be in accordance with sectic

(Minutes of 12-08-1981, § 7; Res. No. 85-286, § 1, 10-05-1985; Res. No. 87-78, §§ 9, 1 20-1987; Ord. No. 89-34, § 6, 05-31-1989; Ord. No. 92-40, §§ 1-4, 06-02-1992; Ord. No. 14, 11-03-1994; Ord. No. 2001-031, § 1(a), 06-12-2001; Ord. No. 2002-008, § 1, 01-28 2003; Ord. No. 2014-053, § 1, 11-25-2014)

Section 3-9-33
(Exhibit A-2)

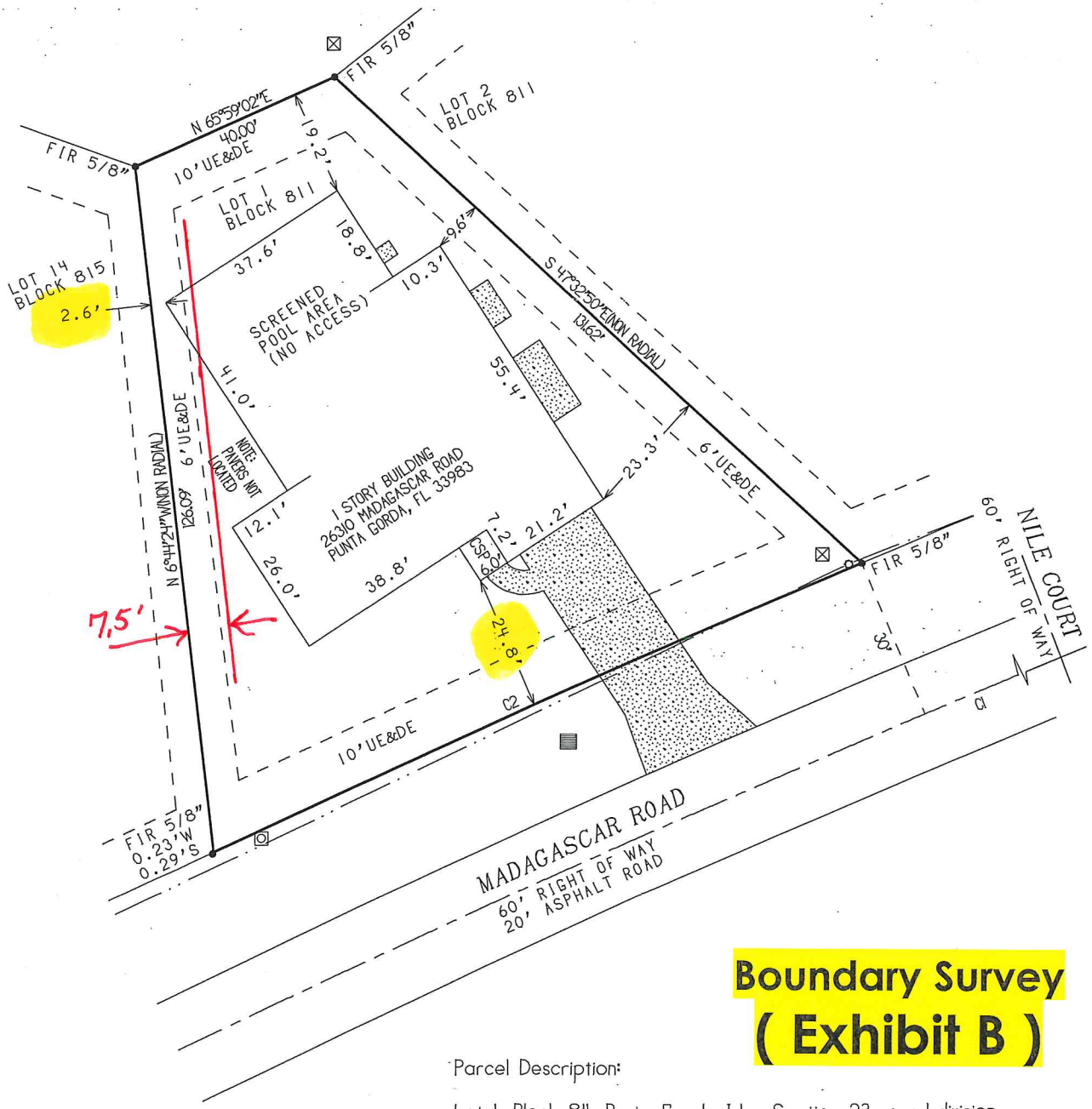
which it has not been certified without the prior written consent of the signing party.

Certified To:
Andrew A. Zartler and Debra L. Zartler
Burnt Store Title & Escrow, LLC
Chicago Title Insurance Company
JP Morgan Chase Bank, N.A.

Revision:

Boundary Survey
W.O.# 15-1791
Date: 11 JUNE 2015
DRAWN BY: DMO

Curve	Delta Angle	Radius	Arc	Tangent	Chord	Chord Bearing
1	1°53'34"	3600.00	118.92	59.46	118.91	S 68°04'31"W
2	2°03'07"	3630.00	130.00	65.01	129.99	S 66°06'11"W



Boundary Survey
(Exhibit B)

Parcel Description:

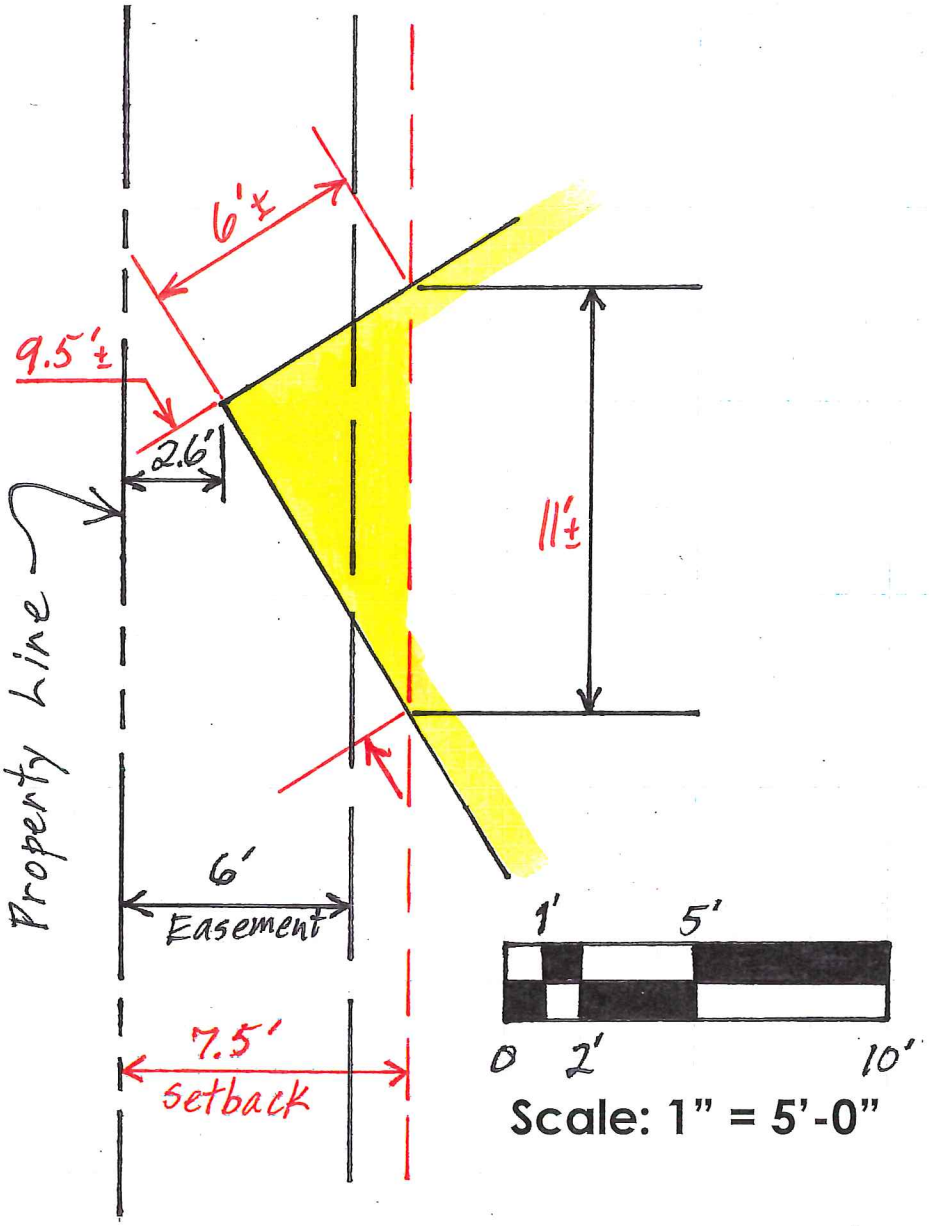
Lot 1, Block 811, Punta Gorda Isles Section 23, a subdivision according to the map or plat thereof, on file and recorded in the Office of the Clerk of Circuit Courts, Charlotte County, Florida, at Plat Book 12, Pages 2A through 27A1, inclusive.

Points of interest:
Screen pool area into easement along Westerly boundary
Driveway through easement along Southwesterly boundary
Driveway across Southeasterly boundary

Scale 1"=30'
0 30

Keith David Clay
Registered Surveyor & Mapper
Certificate No. 6267

©Copyright by Reliable Land Surveying, Inc. and Keith D. Clay, Fort Myers, Florida, 2015. Unauthorized use, publication, or reproduction of this survey map and/or data thereon is subject to criminal and civil prosecution.



Side Yard Setback Detail

Murbarger, Harold V.

12. Narrative: This house was built in 1986 or 1987. Other surveys have been done but to my knowledge no mention of a set back problem in the front of the house. I believe the survey was done to install a Pool in 2005. This pool was installed and the lanai was placed in a position that the west rear corner of the lanai is on the easement. The enclosed land survey shows the area in question. The house is now under contract to sell and a new survey, the one enclosed, was done. I had no knowledge of any set back or easement problems until now. I am doing this application to clear the title so the new purchasers can get their loan to purchase.

Narrative
(Exhibit C)

MEMORANDUM

Date: July 8, 2015

To: Ken Quillen, Planner III

From: Jamie Scudera, Environmental Specialist

Subject: VAR-15-005, 26310 Madagascar Road

The Zoning Environmental Review Section has conducted a cursory review (additional wildlife or environmental reviews may be required by state or federal agencies) of the above referenced petition for compliance with Environmental, Tree and Landscaping codes or ordinances and offers the following comments:

- The site consists of an existing developed single family residence within a developed residential community.

If this petition is approved, the following conditions will be reviewed for compliance upon Site Plan Review (if required) and the issuance of any county permit or land improvement activities:

- As this proposal moves forward, the Environmental Review Section has no issues which need to be addressed.

If there are any questions pertaining to this review please feel free to contact me at (941) 743-1290.

JS

(Exhibit D)

P:animal/Specexcep_Variances/2015/SE-15-005(MurbargerSetbackVariance).doc